

REMARKS

In an Office Action dated July 8, 2008, the Examiner has rejected Claims 45–49 and 51–55 under 35 U.S.C. § 103(a) as unpatentable over Gordon et al. in view of Petrus. Claim 50 has been rejected under 35 U.S.C. § 103(a) as unpatentable over Gordon et al. in view of Petrus further in view of Blau et al.

Independent Claims 45, 54 and 55 have been amended to particularly point out that the idealized profile is the profile of the user's nominal peers. *See e.g.* Specification, p. 11 ln. 24 to p. 12 ln. 5. The profile is not a standardized profile based on such factors as age, sex, physical activity or dietary habits as disclosed by Petrus. *See* Petrus, col. 2, ln. 64–65. Rather, the profile is determined by the level at which the user competes. The claims, therefore, have also been amended to include the feature that each sports person using the system enters information to indicate the level at which he or she competes. *See e.g.* Specification, p. 12 ln. 2–4. The first computer means uses this level to determine for the relevant sport the idealized physiological profile of the sports person's nominal peers. The level at which the user competes is not, the same as Petrus's "physical activity" factor. Petrus's physical activity is the amount of physical activity that the user engages in. As such, it is not sufficiently specific to disclose the level at which the user competes.

Because Gordon in view of Petrus does not disclose or suggest all of the limitations of Applicant's amended Claims 45, 54 and 55, the claims should be allowed. *See In re Royka*, 490 F.2d 981 (CCPA 1974) (holding that a proper § 103 rejection requires that the prior art teach all of the claim limitations); *Ex parte Wada*, BPAI 2007-3733 at 7. (Jan. 14, 2008) (citing *In re Royka* and other Federal Circuit cases holding that obviousness requires a suggestion of all limitations in a claim).

Conclusion

It is the Applicant's belief the amendments herein place the application in condition for a Notice of Allowance, which is respectfully requested. Amended Claims 45, 54 and 55 are patentably distinguishable over Gordon in view of Petrus. Because dependent Claims 46-53 depend from Claim 45, these claims should also be allowed.

Enclosed is a Request for Continued Examination. Please charge Deposit Account No. 50-1971 the amount of \$810 to cover the filing fees. Further, charge any additional fees required by this paper or credit any overpayment to Deposit Account No. 50-1971.

Should any other amendments be necessary to place the application in condition for a Notice of Allowance, Examiner Frisby is invited to call the undersigned at the below noted telephone number.

Respectfully submitted,



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